



Pahulu v. University of Kansas, 897 F. Supp. 1387 (D. Kan. 1995)

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Pahulu v. University of Kansas,

897 F. SUPP. 1387 (D. KAN. 1995).

INTRODUCTION

Plaintiff Alani Pahulu ("Plaintiff") was a college football player who was disqualified for medical reasons from participation in intercollegiate athletics. Plaintiff sued the University of Kansas, its Chancellor, Athletic Director, and the University Athletic Corporation, (collectively "Defendants"), alleging that his disqualification violated the Rehabilitation Act of 1973 ("Act").¹ Plaintiff sought a preliminary injunction to prevent his disqualification from the team. The United States District Court for the District of Kansas found that Plaintiff, who was diagnosed with a congenitally narrow cervical canal, was not "disabled" according to the definition provided in the Act. In addition, the court held that, even if Plaintiff was disabled, the conclusion of the university's physicians that Plaintiff was at an extremely high risk for potentially severe and permanent neurological damage if he continued to play football meant that he was not "otherwise qualified" for purposes of the Act.

FACTS

Plaintiff received an athletic scholarship to play football for the University of Kansas ("KU"). During an intrasquad game at a spring practice, Plaintiff suffered a blow to the head which left him dazed with numbness and tingling in his extremities. The condition was described by physicians as transient quadriplegia. In a subsequent examination, the team physician discovered that Plaintiff had a condition known as a congenitally narrow cervical canal. After consulting with a neurosurgeon from KU Medical Center, the team physician concluded that based on Plaintiff's "previous episode of transient quadriplegia and markedly stenotic cervical canal, [Plaintiff] is at extremely high risk for subsequent and potentially permanent severe neurological injury including permanent quadriplegia."² As a result, Plaintiff was disqualified by KU from participation in intercollegiate football.

Plaintiff, believing that he was physically able to play football, sought additional opinions about his condition and his prohibition from playing college football. After seeing three specialists, all of whom concluded that Plaintiff was at no greater risk of paralysis than any other player, Plaintiff requested that the prohibition on his participation in college football be lifted. In addition, Plaintiff offered to indemnify and release the defendants from any liability in the event that he might be injured. The team physician and the neurosurgeon, however,

1. 29 U.S.C. § 706(8)(B) (1995).

2. *Pahulu v. University of Kansas*, 897 F. Supp. 1387, 1388 (D. Kan. 1987).

refused to reverse their decision to bar Plaintiff from playing football. Again, the physicians based their decision on their belief that Plaintiff was at great risk of severe injury. KU and the other defendants adhered to this conclusion.

Plaintiff then sued KU, its Chancellor, the Athletic Director and the Kansas University Athletic Corporation, alleging that their refusal to let him participate in intercollegiate football was a violation of section 504 of the Act.³ Defendants' motion to dismiss was denied, and Plaintiff subsequently filed a motion for a preliminary injunction.

LEGAL ANALYSIS

The main issue before the district court was whether or not there was sufficient cause to grant Plaintiff preliminary injunctive relief. Under the standard adopted by the Tenth Circuit, the party seeking a preliminary injunction must demonstrate that (1) he will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the party outweighs whatever damage the proposed injunction may cause the opposing party; (3) the injunction, if issued, would not be adverse to the public interest; and (4) there is a substantial likelihood that the party seeking the injunction will succeed on the merits.⁴ In order to satisfy the fourth element of the test, the movant must show that the questions going to the merits of the case are so "serious, substantial, difficult and doubtful" that they are ripe for litigation and require more deliberate investigation.⁵

The court had little trouble disposing of the first three elements. First, Plaintiff demonstrated that he was entering his final year of eligibility for intercollegiate football, and if injunctive relief was not granted, the irreparable harm would be his loss of eligibility and a reduced opportunity for a career in professional football. As for the second element, one of the named defendants acknowledged that KU would suffer little, if any, foreseeable harm if the preliminary injunction was granted. With respect to the third element, neither party offered any evidence to indicate that granting the injunction would be adverse to the public interest.

The final element of the Tenth Circuit's test for preliminary injunctive relief was the most troublesome for the court. In order to succeed on the merits, Plaintiff had to establish a *prima facie* case pursuant to section 504 of the Act.⁶ In order to establish a *prima facie* claim under section 504, Plaintiff had to show that (1) he is "disabled" within the meaning of the statute; (2) he is "otherwise qualified" to participate in the activity or program in question; (3) he was excluded from the activity or program solely on the basis of his disability; and (4) the program receives federal funding.⁷ The court immediately disposed of the third and fourth elements concluding that they were not at issue.

3. Rehabilitation Act of 1973, § 504, (as amended 29 U.S.C. § 794 (1995)).

4. *Walmer v. United States Dep't of Defense*, 52 F.3d 851, 854 (10th Cir. 1995).

5. *Id.*

6. § 504 (amended by 29 U.S.C. § 794 (1995)).

7. *Eivens v. Adventist Health Sys./Eastern & Middle Am., Inc.*, 651 F. Supp. 340, 341 (D. Kan. 1987).

Before examining the first and second elements, however, the court discussed the Tenth Circuit's standard of review for cases brought under the Act. Citing the case of *Pushkin v. Regents of University of Colorado*,⁸ the court pointed out that the inquiry under the Act must focus on whether the institution has, in fact, discriminated on the basis of a handicap, regardless of whether or not there may have been a rational basis for the discrimination.⁹ According to the Act, an "individual with a disability" is "any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."¹⁰

The court had no trouble concluding that Plaintiff's condition was a physical impairment. The real issue, in the court's analysis of whether or not Plaintiff was "disabled" within the meaning of the Act, was whether or not playing college football was a major life activity. In reaching its conclusion on this issue, the court surveyed a wide array of cases and federal regulations in search of a definition for the term "major life activity." A recurring theme in the cases and regulations reviewed by the court was that major life activities included both learning and working.¹¹ Indeed, Plaintiff argued that playing football was a significant component of his college education and that denying him the opportunity to play football would deprive him of an opportunity to learn. The court stopped short of denying that football may have been a major life activity for this particular plaintiff. Nevertheless, the court concluded that Plaintiff's opportunity to learn was not substantially limited by his inability to play football. The court supported its conclusion by pointing out that, even though he was unable to play football, Plaintiff still had his athletic scholarship which gave unlimited access to the academic services available at KU. In addition, Plaintiff had an opportunity to participate in the football program in a capacity other than as a player. Consequently, the court concluded that Plaintiff was not "disabled" within the meaning of the Act.

The final issue addressed by the court in its analysis of Plaintiff's likelihood of success on the merits was whether or not Plaintiff, even if he was disabled, was "otherwise qualified" to play football. The court pointed to a United States Supreme Court case which concluded that "an otherwise qualified person is one who is able to meet all of a program's requirements in spite of his handicap."¹² The KU football program had a requirement that in order to participate as player, an individual must have medical clearance. While Plaintiff offered the opinions of the three specialists, who examined him subsequent to his disqualification, as

8. 658 F.2d 1372 (10th Cir. 1981).

9. *Id.* at 1383-84.

10. 29 U.S.C. § 706(8)(B).

11. *Pahulu v. University of Kansas*, 897 F. Supp. 1387, 1391 (D. Kan. 1995) (citing *Scharff v. Frank*, 791 F. Supp. 182 (S.D. Ohio 1991) (holding that the plaintiff's inability to participate in competitive sporting events and other demanding physical activities did not constitute a substantial impairment of the plaintiff's major life activities)).

12. *Southeastern Community College v. Davis*, 442 U.S. 397, 406 (1979).

evidence of his medical clearance, the court found that the conclusion of the KU physicians was rational and reasonable and that Plaintiff was, therefore, not “otherwise qualified” to play football.

CONCLUSION

The court determined that Plaintiff would not prevail on the merits of his claim because even though football might be a part of his major life activity of learning, he was not “disabled” within the meaning of the Rehabilitation Act. Furthermore, even if he was disabled, he was not otherwise qualified due to his high risk for subsequent and potentially permanent severe neurological injury. Since Plaintiff was unable to show a modified likelihood of success on the merits of his claim, the court denied his motion for preliminary injunctive relief.

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